APPENDIX A

[Received: Aug 2]

JUL 30 1982

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA
SPECIAL TERM, 1982

Ex parte: Shearn Moody, Jr.

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama, ex rel.,
Tharpe Forrester, Commissioner
of Insurance

81-502

v.

Empire Life Insurance Company
of America, an Alabama Corporation)

FAULKNER, JUSTICE.

Moody petitions this Court to issue a writ of mandamus to Circuit Judge William C. Barber of the 10th Judicial Circuit, to permit him to institute what he designates as a purely in personam action in a United States District Court in Texas. Moody is subject to an injunction against his filing certain law suits that Judge Barber issued on January 6, 1975, in *State ex rel. Forrester v. Empire Life Insurance Company,* CA # 171-687, Circuit Court of Jefferson County.

The proposed complaint attached to Moody's mandamus petition seeks damages against the State of Texas; Protective Life Insurance Company; John Bookout, a former Alabama Insurance Commissioner; William Baxley, a former Attorney General of Alabama; and a host of Texas defendants. Moody claims in the complaint that the defendants have deprived him of the value of his majority interest in Empire Life, now in receivership. Moody alleges that his proposed action for damages will in no way interfere with, delay or stop the Empire Life receivership proceedings.

Judge Barber answers the petition for mandamus by saying that Moody has failed to offer any evidence that the proposed action in the United States District Court did not involve the Empire Life receivership proceedings.

From our review of Moody's complaint, and the evidence submitted by him in support of his mandamus petition, and the answer of Judge Barber, we conclude that the proposed civil action for damages is inextricably connected with the Empire receivership. To permit the suit would be an interference with the receivership and therefore mandamus is denied.

WRIT DENIED.

Torbet, C. J., Almon, Embry and Adams, JJ., concur.

I, Dorothy F. Norwood, as Acting Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 30th day of July, 1982

/s/ Dorothy F. Norwood
Acting Clerk, Supreme Court of Alabama

APPENDIX B

[Received: Feb 25]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
EQUITY DIVISION

STATE OF ALABAMA, EX REL. THARPE FORRESTER, COMMISSIONER OF INSURANCE, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 171-687
EMPIRE LIFE INSURANCE COMPANY OF AMERICA, an Alabama corporation, Defendant,	)	
and	)	
SHEARN MOODY, JR., Intervenor.	)	

ORDER AND DECREE

This cause is before the Court on the motion of Intervenor, Shearn Moody, Jr., for an order permitting him to institute more litigation. After due consideration of the matters of record in this receivership proceeding, the subject motion by Intervenor Moody, the amendments thereto, documentary exhibits received at the hearings before this Court on November 24, 1981 and January 28, 1982, briefs and oral argument of attorneys for Moody, Protective Life Insurance Company, and Tharpe Forrester, the current receiver, the Court is of the opinion that the relief sought by the Motion for Order Permitting Shearn Moody, Jr. to Institute Litigation, as amended, should be denied for the following reasons:

1. The proposed complaint that Moody seeks to file is substantially similar to the amended complaint that Moody caused to be filed in *Willie Allmon v. John G. Bookout et al.*, C.A. No. 74-377-N (M.D. Ala. 1975). This was admitted by counsel for Moody in open court on January 28, 1982.

2. The subject proposed complaint is also substantially similar to the proposed complaint that this Court denied permission to Moody to file on November 29, 1976. Moody's counsel has also admitted this.

3. Contrary to the allegations by Moody set forth in the proposed complaint that he now seeks to file, this Court has previously and finally adjudicated that Moody's claims of conspiracy and wrongful actions by Protective and the original receiver have no merit.

4. Contrary to the allegations of Moody's proposed complaint, this Court has previously and finally adjudicated all issues relating to the valuation of the trust asset in this Court's holding that Empire was impaired and insolvent.

5. Moody declined to submit voluntarily to deposition, and declined to provide other discovery in connection with the proposed complaint. At the two evidentiary hearings on the pending motion, Moody offered no testimony or other evidence tending to show that the proposed litigation did not involve the Empire receivership proceedings or was not another effort by Moody to interfere with, delay, or stop the Empire receivership proceedings.

6. The Court believes and finds that the proposed litigation sought by Moody involves the Empire receivership proceeding and would interfere with, delay, and seek to stop these proceedings.

7. Moody has failed to carry the burden of proving that the relief sought by the pending motion should be granted or that he is entitled to any relief.

8. Moody has pursued a pattern of harassing and vexatious litigation, inextricably involved with the Empire receivership proceedings, against the receiver, Protective, and others.

9. Moody was adjuged in criminal contempt on November 1, 1976. On Moody's petition for certiorari, the Supreme Court of Alabama affirmed penalties against Moody by reason of his criminal contempt. Moody has not satisfied the contempt fines; he has not surrendered himself to the Sheriff of Jefferson Coun-

ty, Alabama to serve the sentences imposed, as modified and affirmed by the Supreme Court of Alabama.

ACCORDINGLY, it is ORDERED, ADJUDGED, AND DECREED as follows:

ONE: Moody's motion for an order permitting him to institute litigation, as said motion has been amended by Moody from time to time, is hereby DENIED AND OVERRULED.

TWO: Moody's motion to quash the discovery sought by Protective and the notice of deposition filed by the receiver is DENIED AND OVERRULED.

THREE: Moody's alternative motion for a protective order providing that no discovery be had is deemed MOOT.

FOUR: Protective's motion to compel Moody to provide discovery is also deemed by the Court to be MOOT. In view of the Court's findings and ruling on the subject motion by Moody, the Court considers that the discovery sought by Protective and opposed by Moody is not essential though it may have shed additional light on the issues presented.

FIVE: Costs of the pending motion are hereby taxed against Intervenor, Shearn Moody, Jr.

DONE, this 5th day of February, 1982.

/s/ Wm. C. Barber
Circuit Judge in Equity

cc: Mr. William A. Dobrovir
Mr. William H. Mills
Mr. William A. Robinson
Mr. James W. Webb

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE _____DISTRICT OF _____

SHEARN MOODY, Plaintiff,	)	
v.	)	No.
STATE OF TEXAS, PROTECTIVE LIFE INSURANCE CO. JOHN G. BOOKOUT, WILLIAM J. BAXLEY, MARGARET M. MARTIN, ALFRED WALKER, RALPH R. RASH, CLAY COTTEN, HERBERT CROOK, A. GENE SYKES, and PAUL T. CARR. Defendants.	)	

COMPLAINT FOR DAMAGES

1. This is an action for damages plaintiff suffered by reason of a conspiracy by public officials in the states of Texas, Alabama, and Arkansas, acting under color of their office and of state law, to deprive plaintiff of his property in violation of the First, Fifth and Fourteenth Amendments to the Constitution of the United States. The property was plaintiff's ownership interest in a major insurance company that did business in interstate commerce. As a result of the conspiracy, plaintiff's company was driven out of business and plaintiff was deprived of his interest in the company and other valuable property.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331(a), 1337, 1343(a), 18 U.S.C. § 1964, 15 U.S.C. § 15, and the pendent jurisdiction of this Court. Venue lies in this District under 28 U.S.C. § 1391(b).

PARTIES

Plaintiff

3. Plaintiff Shearn R. Moody, Jr. ("Moody") is a resident of Galveston, Texas. From 1963 to 1972, Moody was President, Chairman of the Board, and majority shareholder of the Empire Life Insurance Company of America ("Empire"). Empire was a corporation organized under the laws of the State of Alabama, maintained executive offices in Dallas, Texas, and did business in several states, including Texas, Alabama and Arkansas.

Defendants

4. (a) Defendant State of Texas ("Texas") has authorized this suit by House Concurrent Resolution Number 118 (May 27, 1975), adopted by the Texas State Senate (May 29, 1975) and approved by the Governor of the State (June 19, 1975). (Exhibit A).

(b) Defendant Protective Life Insurance ("Protective") is a corporation organized under the laws of the State of Alabama, maintains executive offices in Jefferson County, Alabama, and transacts business in several states, including Texas and Alabama. In 1974, Protective acquired all assets of Empire.

(c) Defendant John G. Bookout ("Bookout") is a resident of Montgomery County, Alabama. From January 1971 until January 1975, Bookout was Superintendent (later Commissioner) of Insurance of the State of Alabama. On June 29, 1972, Bookout was named receiver of Empire.

(d) Defendant William J. Baxley ("Baxley") is a resident of Jefferson County, Alabama. From January 1971 until January 1978, Baxley was Attorney General of the State of Alabama.

(e) Defendant Margaret M. Martin is the executrix of the estate of Crawford C. Martin ("Martin") and is a resident of Hill County, Texas. From January 1967 until December 1972, Martin was Attorney General of the State of Texas.

(f) Defendant Alfred Walker ("Walker") is a resident of

Travis County, Texas. From February 1970 until January 1973, Walker was Executive Assistant to Martin, in his capacity as Attorney General of the State of Texas.

(g) Defendant Ralph R. Rash ("Rash") is a resident of Travis County, Texas. From November 1964 until May 1974, Rash was an Assistant Attorney General of the State of Texas and from 1971 until May 1974 was Chief of the Insurance, Banking, and Securities Division of the Texas Attorney General's Office.

(h) Defendant Clay Cotten ("Cotten") is a resident of Travis County, Texas. From November 1965 until January 1974, Cotten was Insurance Commissioner of the State of Texas.

(i) Defendant Herbert Crook ("Crook") is a resident of Travis County, Texas. From 1967 until February 1974, Crook was attorney for the Liquidator of the Texas State Board of Insurance. On February 1, 1974, Crook was appointed Liquidator of the Texas State Board of Insurance. As such, he became the Texas ancillary receiver of Empire until August, 1978.

(j) Defendant A. Gene Sykes ("Sykes") is a resident of Pulaski County, Arkansas. From 1970 until October 1972, Sykes was Insurance Commissioner for the State of Arkansas.

(k) Defendant Paul T. Carr ("Carr") is a resident of Jefferson County, Alabama. Carr is an insurance consultant.

FACTS

(5) On June 27, 1963, Moody formed Empire and caused it to be incorporated. On July 9, 1963, Empire was licensed to sell life insurance in the State of Alabama. Moody was the Chairman of the Board and principal stockholder of Empire.

6. In July 1963, for the purpose of providing Empire with working capital, Moody transferred to Empire, in exchange for a $200,000 surplus debenture, a two-fifths share of Moody's (one-eighth) life interest in the Libby Shearn Moody Trust (the "trust asset").

7. In 1964, the Alabama Superintendent of Insurance assess-

ed the value of the trust asset at $5,813,440, based on an accounting formula developed and applied by the accounting firm of Ernst and Ernst, and subject to insurance on Moody's life in the amount of $6 million.

8. In 1965, Empire's management submitted to the Alabama Superintendent of Insurance updated figures on the earnings and value of the Libby Shearn Moody Trust. On December 13, 1965, the Insurance Departments of Alabama, Texas, and Arkansas approved a report that revalued the trust asset to $14,213,440, subject to an increase in collateral, to wit an increase in the face amount of the life insurance policy on Moody's life, first to $10,000,000, later $14,000,000 and assignment by Moody to a trustee of legal and equitable ownership of Empire stock, $3,528,000 in value. Moody and Empire complied with the new collateral requirements.

9. In 1965 Empire began a program of acquisitions of and mergers and reinsurance treaties with other insurance companies throughout the United States. As of December 31, 1965, as a result of this program Empire and its subsidiaries were transacting business in eighteen states.

10. In the states in which Empire acquired insurance business, the insurance superintendents and commissioners approved the mergers based upon a $14,213,440 trust asset valuation.

11. In June 1969 the Alabama Insurance Commissioner again approved the $14,213,440 valuation, but required Empire to begin reducing that valuation each year to account for Moody's annual reduction in life expectancy, and accordingly to place $430,710 annually in a special surplus reserve fund. The Commissioner also approved the $14,213,440 valuation of the trust asset for future years through 1972 and beyond, with the condition that the special surplus reserve be maintained.

12. From 1954 to 1973 and 1977 to the present, Moody has been trustee of the Moody Foundation, one of the largest charitable institutions in the State of Texas.

13. In October 1970 Martin, acting as Attorney General of

Texas, became a party to a lawsuit between Moody and other trustees of the Moody Foundation, including Paul Haas.

14. In the spring of 1970 Haas made campaign contributions to Martin. In January 1971 Haas had offered use of his private two engine airplane to Martin to transport Martin to a hearing in the Moody-Haas litigation.

15. In October 1971 Martin made public statements, reported prominently in the press, calling for Moody's removal as a trustee of the Moody Foundation. In the lawsuit, in December 1971, Martin sought as relief the removal of Moody as a trustee of the Moody Foundation.

16. In December 1971 the Texas court ruled in favor of Moody in the litigation.

17. Martin, seeking reelection in 1972 as Attorney General of Texas, was opposed for the Democratic nomination by John Hill. Martin became aware early in 1972 that Moody was supporting Hill's campaign. Martin charged in public and to the press that he considered Moody to be his real opponent in the election contest. Martin determined to seek revenge against Moody for his political support of Hill and, motivated by his desire to punish Moody for Moody's political opposition to him, Martin took the actions described in ¶¶ 22-26 below.

18. In January 1971 Bookout was appointed Alabama Insurance Commissioner. Despite the predecessor Commissioner's June 9, 1969, prospective valuations of the trust asset through 1972 and thereafter, Bookout almost immediately after assuming office took steps to devalue the trust asset.

19. On October 14, 1971, before any formal administrative proceedings against Empire concerning the valuation of any of Empire's assets, including the trust asset, were even attempted, Bookout accused Moody of mismanagement and threatened him with a receivership and the liquidation of Empire.

20. In late 1971, Bookout met and spoke with Cotten and Sykes. Together they formed the intention to deprive Moody of his ownership and control of Empire. Without having received any evidence or having conducted any proceedings on

the merits, Bookout, Cotten and Sykes determined to devalue the Empire trust asset and deprive Moody of control of Empire. Pursuant to the plan jointly formed in his meeting and conversations with Cotten and Sykes, Bookout withdrew a previous request to the National Association of Insurance Commissions for guidance concerning valuation of the trust asset. On January 20, 1972, Bookout notified Empire that he intended to devalue the trust asset and that he considered Empire to be significantly "impaired."

21. In late 1971 and early 1972, in anticipation of placing Empire into receivership, Bookout met with Carr, an insurance consultant, and communicated with Judge Barber.

22. At or about the same time that Bookout met with Cotten and Sykes, Martin contacted Baxley, then Alabama Attorney General. Martin declared to Baxley that Empire was being mismanaged or was financially impaired, and that Empire's management included "people with unsavory reputations." During the next several months, Martin, Walker (Martin's assistant), and Rash continued to urge Baxley to take steps against Moody and his company. In early 1972, without any independent knowledge or evidence of any impropriety by Moody or of financial impairment of Empire and without any basis in fact or in law to take action against Moody or Empire, Baxley agreed to acquiesce to Martin's importunings and to take such action as Martin desired.

23. In early 1972, Martin instructed Walker to prepare for Baxley a letter to be addressed by Baxley to Bookout, urging Bookout to place Empire into receivership. This letter was mailed to Baxley.

24. On April 3, 1972, Baxley sent a letter based on the Martin/Walker draft to Bookout. At the time, Baxley still had no independent knowledge of any alleged impairment of Empire. Martin continued to urge Baxley to cause Bookout to place Empire into receivership and remove Moody from control, and pursuant to his agreement with Martin, Baxley continued to encourage Bookout to commence receivership proceedings.

25. In March 1972 Rash informed Walker that Cotten had in-

formed him that Cotten and Bookout were determined to remove Moody from control of Empire.

26. In an effort to build public pressure for a receivership, Baxley, Martin and Cotten revealed confidential information that put Empire in an unfavorable light and made statements encouraging the placement of Empire into receivership to Alabama and Texas newspapers.

27. On April 5, 1972, Cotten, without conducting any hearing, entered an Order of Supervision placing an Administrator in supervisory control of Empire in the State of Texas, in the place of Empire's Board of Directors.

28. Pursuant to his agreement with Bookout and Cotten, Sykes then sought a receivership over Empire in the State of Arkansas, based on the Texas administrative order. On April 11, 1972, Sykes mailed to Bookout a copy of a petition for receivership and an order placing Empire into receivership in the Arkansas state courts, effective April 10, 1972.

29. Bookout scheduled an administrative hearing, at which he would preside and consider evidence as to whether the trust asset should be devalued, to take place on April 10, 1972. One week before the hearing, Bookout wrote to Baxley requesting authorization to file suit to place Empire into receivership. On April 10, 1972, before the hearing began and at the request of Rash, Baxley hand-delivered to Bookout authorization to place Empire into receivership.

30. On April 13, 1972, two days after Empire had submitted evidence to Bookout demonstrating that the $14 million valuation of the trust asset was conservative, Bookout wrote to Moody that he had fixed the value of the trust asset at $4,250,000. Bookout also falsely informed Moody that Alabama law required him to place Empire into receivership once another state (Arkansas) had done so, when, as Bookout knew or had reason to know, Alabama law explicitly gave him as Commissioner broad discretion in such circumstances.

31. On April 20, 1972, Bookout, acting upon Baxley's authorization given at Rash's instance, instituted receivership

proceedings against Empire by filing a petition in the Circuit Court of Jefferson County, Alabama, to place Empire in permanent receivership. On June 15, 1972, Bookout met with Robert and Shearn Moody in Denver, Colorado, and admitted that his actions had been caused by intense political pressure from the offices of Cotten, Martin, and Baxley which had urged Bookout to force Moody out of the insurance business.

32. Bookout also told Robert and Shearn Moody that he intended to return control of Empire to Moody once the political pressure subsided. Bookout requested Moody to withdraw Empire's request for a rehearing on the valuation of the trust asset. Moody complied with the request.

33. On June 22, 1972, Cotten formally requested Martin to initiate ancillary receivership proceedings against Empire in the State of Texas.

34. On June 29, 1972, the Circuit Court of Jefferson County, Alabama, Hon. William C. Barber presiding, granted Bookout's petition to place Empire in permanent receivership in the State of Alabama and appointed Bookout receiver.

35. Bookout as receiver of Empire was under court order to rehabilitate Empire and return it to the control of its stockholders and directors instead of proceeding to liquidation. Sykes was under a similar order in Arkansas and Texas law imposed the same duty upon Cotten. Bookout, Protective, Carr, Martin, Walker, Rash, Crook, Cotten and Sykes conspired to prevent rehabilitation, for the purpose of liquidating Empire in order to turn its assets over to Protective through a bulk reinsurance treaty.

36. Bookout determined that reinsurance proposals should be solicited and evaluated before making the final decision to rehabilitate or liquidate. On August 29, 1973, a self-selected committee of interested insurance commissioners, of which Bookout and Cotten were members, resolved that reinsurance be considered only by companies with surplus exceeding $25 million. Protective, a competitor of Empire and its subsidiaries in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana,

Maryland, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and the District of Columbia, did not fit within the category.

37. Carr, the receivership's consulting expert on insurance matters, determined that a rehabilitation plan proposed by Moody was feasible and should be adopted. Under the plan, three of Empire's subsidiaries would merge and would reinsure Empire's policies.

38. Cotten, Rash and Sykes were determined not to permit any rehabilitation plan that would enable Moody to regain control of Empire and its assets. In September 1972, Rash told Cotten that he was disturbed that Alabama would consider rehabilitation. In March 1973 Cotten wrote Bookout, strongly opposing any rehabilitation plan. In May 1973, after Bookout submitted rehabilitation proposals to Cotten, Cotten sought to pressure Bookout into rejecting them and made representations, *ex parte,* directly to Judge Barber. In October 1973, Cotten sought various means to prevent Empire from being rehabilitated. In early 1974, Cotten and Rash became alarmed upon learning that Judge Barber was favorably inclined to accept Moody's specific rehabilitation proposal, based on Carr's recommendation.

39. During 1973 Protective contacted Bookout, Carr, and Judge Barber to express its interest in acquiring Empire's assets.

40. In February 1973 Ryburn Bailey, Protective's counsel, met with Carr and offered to bribe him by suggesting that if Protective was to assume Empire's assets and insurance business through the receivership, Protective would engage Carr's services as a consultant.

41. On September 12, 1973, acting on Carr's advice, Judge Barber ordered a $15 million minimum surplus requirement for prospective bidders, instead of the $25 million minimum surplus requirement adopted by the insurance commissioners on August 29, 1973. This made Protective eligible to submit reinsurance proposals.

42. On October 26, 1973, Ryburn Bailey and William Rushton, Protective's President, approached Judge Barber *ex parte* to discuss Protective's contemplated bid.

43. The deadline for submission of reinsurance proposals was November 2, 1973. On November 3, 1973, Judge Barber instructed Carr to study the proposals submitted and to recommend which, if any, should be accepted.

44. On November 6, 1973, Carr met with Thomas Pennington, a Protective Vice President. Three days later, Carr emphatically recommended Protective's bid to Judge Barber, even though he had previously taken the position that Moody's rehabilitation program was appropriate and should be accepted.

45. Protective lobbied insurance commissioners of other states to support its proposal. On December 5, 1973, Protective convinced a committee of interested insurance commissioners to pass a resolution recommending the Protective bid. Cotten, pursuant to the conspiracy to prevent any rehabilitation plan from being adopted, signed the resolution.

46. On January 8, 1974, Bookout petitioned the Circuit Court of Jefferson County, Alabama to liquidate Empire, to accept Protective's proposal to reinsure Empire, and to permit Protective to assume all of Empire's assets, including the trust asset, without any compensation to Empire's shareholders.

47. In April 1974 Crook in his capacity as Texas Liquidator attended a hearing before Judge Barber. He thereafter met with Rash and others to consider what further steps to take to assure that Empire would not be rehabilitated.

48. On June 14, 1974, Judge Barber granted Bookout's petition of January 8, 1974.

CLAIMS FOR RELIEF

49. In their actions to obtain devaluation of the trust asset and placement of Empire into receivership, Martin, Walker, Rash, Cotten, Bookout, Carr, and Sykes, acting under color of their offices and of state law, conspired to and did in fact violate Moody's constitutional right to maintain his political views, to

participate in the electoral process, to maintain an interest in property (i.e. Empire), to due process of law, and to equal protection of the law, in violation of the First, Fifth and Fourteenth Amendments to the Constitution and 42 U.S.C. §§ 1983 and 1985.

50. In their actions to prevent rehabilitation of Empire and give control and possession of Empire's assets to Protective, Martin, Walker, Rash, Cotten, Bookout, Carr, Sykes and Protective, the officials acting under color of their offices and of state law, violated Moody's constitutional rights to maintain an interest in property (i.e. Empire), to equal access to the courts, to due process of law free of improper influence or attempted influence, and to equal protection of the law, in violation of the First, Fifth and Fourteenth Amendments to the Constitution and 42 U.S.C. §§ 1983 and 1985.

51. In their attempts to eliminate Empire and its subsidiaries as actual and potential competitors to Protective in the sale of life insurance in interstate commerce, defendants violated the federal antitrust laws, 15 U.S.C. § 1 *et seq.*

52. In their fraudulent attempts to obtain devaluation of the trust asset, to have Empire placed in receivership, to prevent Empire's rehabilitation and to obtain court approval of Protective's reinsurance proposal through bribery and other unlawful means, defendants used the U.S. Postal System and telephone communications and violated 18 U.S.C. §§ 201, 1341 and 1343 and 15 U.S.C. § 78j (and implementing regulation). Protective thus acquired, and the other defendants helped it to acquire, an interest and control of an enterprise, Empire, engaged in interstate commerce, in violation of 18 U.S.C. §§ 1962, 1964(c). Defendants are liable to Moody for treble damages and cost of this suit, including attorney's fees, under 18 U.S.C. § 1964(c).

53. In conspiring to commit the acts set forth in ¶¶ 1-52, by illegal means and for an improper purpose, Martin, Walker, Rash, Cotten, Bookout, Carr, Sykes and Protective are liable to Moody for damages under the law of Texas and Alabama.

DAMAGES

54. As a result of defendants' actions, Moody was deprived of the value of his majority interest in Empire, a company which until defendants' conspiracy took effect had a value of $25,000,000, including his interest in the $16,000,000 trust asset, and $2 million in costs expended in an attempt to combat defendants' unlawful actions. In total, Moody suffered $27,000,000 in damages.

WHEREFORE, Moody moves this Court to award him:

(1) $81,000,000 as trebled actual damages.

(2) $25,000,000 in punitive damages.

(3) Costs and attorney's fees.

Respectfully submitted,

_____

APPENDIX D

Alabama Code tit. 27 §27-32-5(b) (1977) provides (emphasis added):

> (b) The court may, at any time during a proceeding under this chapter, issue such other injunctions or orders *as may be deemed necessary to prevent* interference with the commissioner or the proceeding, or waste of the assets of the insurer, or *the commencement or prosecution of any actions,* or the obtaining of preferences, judgments, attachments or other liens or the making of any levy against the insurer or against its assets or any part thereof.

Twenty-four other states have virtually identical provisions:

Alaska Stat. §21.78.030(b) (1966)
Ariz. Rev. Stat. Ann. §20-614(B) (1975)
Ark. Stat. Ann. §66-4804(2) (1980)
Del. Code Ann. tit. 18, §5904(b) (1975)
Fla. Stat. Ann. §631.041(2) (West 1972)
Ga. Code Ann. §56-1414(2) (1977)
Haw. Rev. Stat. §431-670(b) (1976)
Idaho Code §41-3305(2) (1977)
Me. Rev. Stat. tit. 24-A, §4362(2) (1974)
Md. Ann. Code art. 48A, §135(2) (1979)
Minn. Stat. Ann. §60A.04(24) (West 1968)
Nev. Rev. Stat. §696B.270(2) (1977)
N.J. Stat. Ann. §17.30C-5(b) (West Supp. 1980)
N.Y. Ins. Law §528(2) (McKinney 1966)
N.C. Gen. Stat. §58-155.19(b) (1975)
Okla. Stat. Ann. tit. 36, §1904(B) (West 1976)
Or. Rev. Stat. §734.140(2) (1979)
S.D. Compiled Laws Ann. §58-29-12 (1978)
Tenn. Code Ann. §56-9-105 (1980)
Tex. Ins. Code Ann. tit. 21-28, §4(b) (Vernon 1963)
Utah Code Ann. §31-28-19(2) (1974)
Wash. Rev. Code Ann. §48.31.200(2) (1961)
W. Va. Code §33-10-4(b) (1975)
Wyo. Stat. §26-33-104(b) (1977)

Eight additional states' statutes, in slightly different form, empower courts to issue injunctions or orders deemed necessary to

prevent ". . . the institution or prosecution of any actions or proceedings." They are:

Cal. Ins. Code §1020(c) (West 1972)
Conn. Gen. Stat. §38-425(a)(6) (1981)
Ind. Code Ann. §27-9-1-4(6) (Burns Supp. 1980)
Ky. Rev. Stat. §304.33-050(f) (1981)
Mont. Rev. Codes Ann. §33-2-1309(f) (1979)
N.H. Rev. Stat. Ann. §402-C:5(f) (Supp. 1979)
40 Pa. Cons. Stat. Ann. §221.5(a)(vi) (Purdon Supp. 1980)
Wis. Stat. Ann. §645.05(f) (1980)

APPENDIX E

1.

Approximately 50 insurance receivership proceedings have been instituted in Texas from 1970 to the present. Permanent injunctions that bar all litigation were issued in 33 of them:

1. *State of Texas v. Dealers National Insurance Co.*, No. 182,811 (53rd Jud. Dist., Travis Cty., Tex.) – Order of Oct. 20, 1970 at 6.
2. *The State of Texas v. Modern Investors Life Insurance Company*, No. 185,592 (167th Jud. Dist., Travis Cty., Tex.) – Order of May 14, 1972 at 5.
3. *The State of Texas v. Trans Plains Insurance Company, et al.*, No. 186,515 (53rd Jud. Dist., Travis Cty., Tex.) – Order of June 4, 1971 at 5.
4. *State of Texas v. First Fire and Casualty Insurance Company*, No. 195,205 (53rd Jud. Dist., Travis Cty., Tex.) – Order of April 12, 1973 at 5.
5. *The State of Texas v. Gene B. McFerrin, et al.*, No. 195,750 (200th Jud. Dist., Travis Cty., Tex.) – Order of June 26, 1974 at 5.
6. *The State of Texas v. Cattlemen's Life Insurance Company*, No. 196,989 (53rd Jud. Dist., Travis Cty., Tex.) – Order of Aug. 14, 1980 at 5.
7. *State of Texas v. Empire Life Insurance Company of America, et al.*, No. 198,374 (53rd Jud. Dist., Travis Cty., Tex.) – Order of Nov. 15, 1974 at 5.
8. *State of Texas v. Maryland National Insurance Company*, No. 198,471 (53rd Jud. Dist., Travis Cty., Tex.) – Order of June 16, 1975 at 5.
10. *The State of Texas v. National Fidelity Mutual Life Insurance Co.*, No. 218,100 (53rd Jud. Dist., Travis Cty., Tex.) – Order of Sept. 10, 1975 at 4.
11. *The State of Texas v. James R. Hardin, Individually, and James R. Hardin, DBA Jim Hardin Insurance, et al.*, No. 222,824 (167th Jud. Dist., Travis Cty., Tex.) – Order of Oct. 1, 1974 at 5.
12. *The State of Texas v. Vehicle Warranty Corporation*, No. 224,828 (53rd Jud. Dist., Travis Cty., Tex.) – Order of Aug. 26, 1981 at 5.

13. *The State of Texas v. National Family Mutual Life Insurance Company*, No. 232,166 (200th Jud. Dist., Travis Cty., Tex.) – Order of July 21, 1981 at 4.

14. *State of Texas v. Wisconsin Surety Corporation*, No. 232,373 (200th Jud. Dist., Travis Cty., Tex.) – Order of Dec. 29, 1975 at 4.

15. *State of Texas v. Interstate Insurance Company*, No. 232,811 (200th Jud. Dist., Travis Cty., Tex.) – Order of Dec. 12, 1975 at 4.

16. *State of Texas v. Summit Insurance Company of New York*, No. 233,370 (200th Jud. Dist., Travis Cty., Tex.) – Order of June 27, 1975 at 4.

17. *The State of Texas v. Source Life Insurance Company*, No. 234,852 (53rd Jud. Dist., Travis Cty., Tex.) – Order of Aug. 26, 1981 at 6.

18. *The State of Texas v. Cardinal Life Insurance Company*, No. 236,899 (200th Jud. Dist., Travis Cty., Tex.) – Order of Aug. 3, 1981 at 5.

19. *State of Texas v. Mobile Insurance Company*, No. 237,782 (201st Jud. Dist., Travis Cty., Tex.) – Order of Sept. 25, 1975 at 5.

20. *State of Texas v. Mobile County Mutual Insurance Company*, No. 237,783 (201st Jud. Dist., Travis Cty., Tex.) – Order of Sept. 25, 1975 at 5.

21. *The State of Texas v. Missouri General Insurance Company*, No. 239,566 (167th Jud. Dist., Travis Cty., Tex.) – Order of March 16, 1976 at 5.

22. *The State of Texas v. Medallion Insurance Company*, No. 239,567 (167th Jud. Dist., Travis Cty., Tex.) – Order of Mar. 16, 1976 at 5.

23. *The State of Texas v. American Travelers Life Insurance Company*, No. 240,928 (200th Jud. Dist., Travis Cty., Tex.) – Order of Nov. 24, 1975 at 5.

24. *The State of Texas v. Manufacturers and Wholesalers Indemnity Exchange*, No. 242,146 (200th Jud. Dist., Travis Cty., Tex.) – Order of Feb. 10, 1976 at 5.

25. *The State of Texas v. Guthrie, Harris & Brown Insurance Company*, No. 250,160 (126th Jud. Dist., Travis Cty., Tex.) – Order of Nov. 12, 1981 at 4.

26. *The State of Texas v. Old Security Life Insurance Company,* No. 267,341 (167th Jud. Dist., Travis Cty., Tex.) – Order of Nov. 14, 1979 at 5.

27. *The State of Texas v. First American Surety Corporation,* No. 287,383 (53rd Jud. Dist., Travis Cty., Tex.) – Order of Nov. 27, 1979 at 5.

28. *The State of Texas v. Great Security Life Insurance Company,* No. 288,835 (98th Jud. Dist., Travis Cty., Tex.) – Order of July 18, 1979 at 4.

29. *The State of Texas v. Reserve Insurance Company,* No. 290,961 (147th Jud. Dist., Travis Cty., Tex.) – Order of Dec. 20, 1979 at 6.

30. *The State of Texas v. Ministers Benefit Trust, Bob A. Littlejohn, Trustee, A. Alvis Edmonson, Chairman, Benefit Committee, A.R. Wilson and Donald J. Stone, Members, Benefit Committee,* No. 314,116 (200th Jud. Dist., Travis Cty., Tex.) – Order of Dec. 19, 1980 at 6.

31. *State of Texas v. Group Health of El Paso, Inc.,* No. 319,947 (98th Jud. Dist., Travis Cty., Tex.) – Order of July 23, 1981 at 7.

32. *The State of Texas v. Proprietors' Insurance Company,* No. 324,504 (126th Jud. Dist., Travis Cty., Tex.) – Order of Jan. 26, 1982 at 6.

33. *The State of Texas v. Nation-wide Health Insurance Trust, et al.,* No. 61,240-C (149th Jud. Dist., Brazoria Cty., Tex.) – Order of Aug. 3, 1978 at 4.

2.

The National Association of Insurance Commissioners, *Manual for Receivers of Insurance Companies* (1982), provides sample forms for injunctions to be issued in insurance receiverships. A sample from Florida provides:

> 26. All persons, corporations or associations within the jurisdiction of this Court are hereby enjoined and restrained from commencing, maintaining or further prosecuting any action at law or in equity or other proceeding against Respondent or the Receiver.

Manual at 418; *see id.* at 486. A sample from New York provides:

. . . and it is further

ORDERED, that the officers, directors, trustees, policyholders, agents and employees of said SUMMIT INSURANCE COMPANY OF NEW YORK, and *all other persons be and they are hereby enjoined and restrained from bringing or further prosecuting any action at law, suit in equity, special or other proceeding against the said corporation or its estate, or the Superintendent of Insurance of the State of New York and his successors in office,* as Liquidator thereof, or from making or executing any levy upon the property or estate of said corporation, or from in any way interfering with the Superintendent of Insurance of the State of New York, or his successors in office, in his or their possession, control or management of the property of said corporation, or in the discharge of his or their duties as Liquidator thereof, or in the liquidatioin of the business of said corporation. . . .

Manual at 432 (emphasis added).

3.

The *Manual* also lists 224 insurance companies that were placed in receivership between 1969 and 1980. *Id.* at 755-78. Some were multi-state companies. The *Manual* lists a total of nearly 400 receivership proceedings (including ancillary proceedings) for the 224 companies listed.